WP(C) 871/2007
BEFORE
HON'BLE JUSTICE RANJAN GOGOI

JUDGMENT & ORDER

1. An order dated 30.10.2006 passed by the learned Presiding Officer, Labour Court, Guwahati, holding the appointment of the petitioner in the post of Lower Division Assistant in the establishment of the Labour Court to be illegal is the subject matter of challenge in the present writ petition.

2. The facts are long but only what is essential for the purpose of the present adjudication will be noticed.

The petitioner was initially appointed to work as a Mali/Gardener in the establishment of the Labour Court, Guwahati on a monthly fixed pay of Rs.1000/-. This was by an order dated 24.4.98. According to the petitioner, at the time of his initial appointment he was well qualified educationally and therefore he was asked to do various other miscellaneous works apart from working as a Gardener. By an order dated 16.8.99 the petitioner was appointed in a vacant post of Lower Division Assistant. On 30.12.99, by an order issued by the Presiding Officer of the Labour Court, the appointment of the petitioner was terminated on the ground that the same was made without any sanction or approval of the Government. The petitioner challenged the said order by instituting a writ proceeding registered and numbered as W.P.(C) No.96 of 2000 wherein by an interim order dated 6.1.2000 this Court passed orders to the effect that the petitioner should be allowed to continue in service. A consequential order dated 12.1.2000 was, therefore, passed by the Presiding Officer, Labour Court, allowing the petitioner to continue in service. Thereafter, according to the petitioner, the subsequent Presiding Officers of the Labour Court wrote several letters, some of which have been enclosed to the writ petition, to recommend that the petitioner's service should be regularized. According to the petitioner, during this period he was deputed to undergo several training courses including a training course on preparation of paper books and case records management in the High Court.

3. While the matter was so situated, WP(C) No.96 of 2000 instituted by the petitioner was closed by this Court on 29.1.2004 on the statement made on behalf of the State that the case of the petitioner for regular appointment is being considered. The Court, therefore, left it open for the Government to pass appropriate orders in the matter in accordance with law. Thereafter, on 16th of February 2004 the Presiding Officer of the Labour Court again wrote to the Government seeking appropriate orders for regular appointment of the petitioner in the post of Lower Division Assistant by stating that the petitioner has been working for long and that the post has to be filled up in the exigencies of service. Thereafter, on 21.6.2005 the Presiding Officer of the Labour Court was informed that the State Level Empowered Committee, the authorised body to grant approval to appointments in vacant posts, had approved the filling of the vacant post of Lower Division Assistant -cum -Typist in the Labour Court by way of direct recruitment in order to accommodate the petitioner, as proposed by the Presiding Officer. The aforesaid approval, it was mentioned in the letter dated 21.6.2005, would be subject to observance of all necessary formalities.

4. According to the petitioner, on the basis of the aforesaid letter dated 21.6.2005 the petitioner submitted his joining report on 1.7.2005 which was accepted by the Presiding Officer. However, as the Presiding Officer of the Labour Court had issued a separate office order dated 8.7.2005 appointing the petitioner in the post of Lower Division Assistant-cum-Typist pursuant to the Government order dated 21.6.2005 he had submitted another joining report on 11.7.2005. Thereafter, according to the petitioner, for reasons not bona fide, details of which though mentioned in the writ petition need not be noticed, the Presiding Officer

took the view that the petitioner had unilaterally and illegally interpreted th e Government Order dated 21.6.2005 to be an order of appointment and had submitt ed his joining report on 1.7.2005. Furthermore, according to the petitioner, the Presiding Officer was of the view though the petitioner was asked to submit a f resh joining report pursuant to the office order dated 8.7.2005 the petitioner h ad failed to so act. After reciting the said facts in the order dated 30.10.2006 ,the Presiding Officer took the further view that as the petitioner's appointmen t was made without holding any selection and without observing the due formaliti es, as require, the said appointment is illegal and that the petitioner should b e prohibited from entering the premises of the Labour Court. It is the further c ase of the petitioner that around this time he had submitted a leave application which was rejected by the Presiding Officer by order dated 7.11.2006. It is alo ngwith the said letter dated 7.11.2006 that the order dated 30.10.2006 was forwa rded to the petitioner who, for the first time, could come to know of the order dated 30.10.2006 in the said circumstances. According to the petitioner, the Pre siding Officer was transferred from the Labour Court and posted as the Member Se cretary of the Assam State Legal Services Authority on 17.10.2006 in which post he joined on 7.11.2006. In the above facts the authority of the Presiding Office r to pass the order dated 7.11.2006 and forward the order dated 30.10.2006 along with the said order dated 7.11.2006 has been questioned by the petitioner.

5. In the writ petition filed the Presiding Officer, labour Court, who had passed the impugned order dated 30.10.2006 was impleaded as respondent No.3 in h is personal capacity. The Registrar of the Labour Court was also impleaded by na me. Though notices of the writ petition have been duly served on both the afores aid respondents no affidavit has been filed on their behalf nor are they represe nted before the Court at the hearing. The other respondents impleaded in the wri t petition have also not filed any affidavit.

6. In the impugned order dated 30.10.2006 it has been recited that the peti tioner had wrongly treated the Govt. order dated 21.6.2005 as an order of appoin tment in his favour and that, thereafter, though the Presiding Officer of the La bour Court had appointed him by the office order dated 8.7.2005 he had refused t o acknowledge the said office order and had defied the said authority by refusin g to submit any other joining report apart from the one dated 1.7.2005 that the petitioner had submitted pursuant to the Govt. order dated 21.6.2005. Therefore, according to the Presiding Officer, the petitioner has forfeited his right to b e appointed in the post in terms of the order dated 21.6.2005, which, in any cas e, visualized the appointment of the petitioner only upon completion of certain formalities.

7. Even assuming the version given by the Presiding Officer with regard to the Govt. order dated 21.6.2005 to be the correct version, what cannot escape th e Court's notice is that the very same Presiding Officer of the Labour Court, hi mself, had passed the consequential office order dated 8.7.2005 appointing the p etitioner in the post of Lower Division Assistant -cum- Typist in terms of the G ovt. order dated 21.6.2005. In view of the said fact, it is not understood how t he Presiding Officer in the order dated 30.10.2006 could have taken the view tha t the order dated 21.6.2005 does not specifically contain the approval for appoi ntment of the petitioner and that such appointment of the petitioner was require d to be made by observing further formalities. A reading of the Govt. order date d 21.6.2005 clearly goes to show that by the said order the approval of the Stat e Level Empowered Committee for filling up one vacant post of LDA - cum- Typist in the Labour Court was granted. The order dated 21.6.2005 further recites that such approval is being granted to accommodate the petitioner who had been workin g in the said post. If that be so, merely because in the Govt. order dated 21.6. 2005 it has been mentioned that other requisite formalities should be completed, the said formalities cannot be understood to have required a selection to be he ld for the post in question, a view that appears to have been taken by the Presi ding Officer in the order dated 30.10.2006. That apart, the petitioner having pl

aced before the Court a copy of a second joining report submitted by him on 11.7 .2005 pursuant to the office order dated 8.7.2005 appointing him pursuant to the Govt. order dated 21.6.2005 and the said document not having been controverted by the Presiding Officer or by the Registrar of the Labour Court i.e. Respondent Nos.3 and 4, it is difficult to see as to how the finding recorded in the order dated 30.10.2006 that the petitioner had not filed any joining report can be le gally sustained.

In this regard the Court must also take notice of the fact that in the w rit petition filed the petitioner has alleged that the order dated 30.10.2006 ha s been passed by the Presiding Officer on grounds and for reasons, as mentioned, which are not bonafide and that the said order has been prompted by malice and extraneous considerations. The said averments have remained uncontroverted in th e absence of any affidavit or representation on behalf of the Respondents, parti cularly, the Respondent Nos.3 and 4.

8. On the basis of the above the Court is satisfied that in the facts of th e present case it will only be proper to conclude that the order dated 30.10.200 6 suffers from certain inherent flows and contradictions; besides the said order , in the considered view of the Court, reflects an element of unfairness and arb itrariness for which reason the same is liable to interference at the hands of t he Court. Consequently and for the reasons alluded to I allow this writ petition , set aside the order dated 30.10.2006 and direct the continuance/ reinstatement of the petitioner in service, as may be. Such reinstatement, if called for, sh all be made within 30 days from today. All consequential benefits including back wages shall also be paid to the petitioner forthwith and without any delay.

9. The writ petition, therefore, is allowed as indicated above.